IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.57 OF 2005
IN
ARBITRATION PETITION NO.329 OF 2004

Oil and Natural Gas Corporation Ltd. ..Appellant (Orig.Petnr.)

Vs.

Garware Shipping Coropration Ltd. ..Respondents. (Orig.Respdts.)

Mr.I.Chhagla, Senior Counsel with Mr.Rajiv Kumar i/b.M/s.Vyas & Bhalwal for the Appellant.

Mr.Janak Dwarkadas, Sr.Counsel with Mr.Ravi Kadam with Mr.B.Saraf i/b.Shaunak Satpute & Co. for the Respondents.

CORAM: A.P.SHAH AND S.J.VAZIFDAR, JJ.

DATED: 1ST MARCH, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

This is an Appeal against the order of the learned Single Judge dismissing the Appellant's Petition under section 34 of the Arbitration and Conciliation Act, 1996 challenging an award made by the learned arbitrator.

2. Mr.Chagla, the learned senior counsel appearing on behalf of the Appellant confined his challenge to

the award before us on two grounds.

As we intend confirming the order of the learned Single Judge, it is necessary for us to refer to the facts only briefly.

3. The Appellant required Offshore Vessels (OSVs) inter-alia for supplying material from its onshore bases to its offshore installations. After initially meeting its requirements by chartering foreign OSV, the Appellant for certain reasons decided to develop a fleet of Indian Flag Vessels. Various Indian companies including the Respondent and the Shipping Corporation of India therefore acquired OSVs, with a view to chartering them to the Appellant. The Respondent acquired five vessels - Garware I to Garware V which were handed over to the Appellant in the months of November and December, 1983 and January and March, 1984.

4. The dispute pertains to the cost of repairs and maintenance of the Respondent's OSVs for the eleventh to the sixteenth year of their operation. Though there is no dispute regarding the first two terms of five years each, we shall, to compete the narration, refer to the manner in which the rates

for the same were arrived at.

(a). A working group under the Director General of Shipping was constituted by the Ministry of Petroleum to determine the floor day rate in respect of the said vessel keeping two objects in mind : long term availability of the OSV's for the Appellant and economic viability to ensure the Respondent's survival in the business. The report was submitted by the working group on 8.3.1984 suggesting the day rate which comprised of two components : capital recovery factor and operating expenses.

(b). Contracts were accordingly entered into for the first five year period beginning from 1983-84. The Government of India by an order dated 18.8.1984 approved the report in certain respects only. There is no dispute between the parties regarding the payments of operating costs for the first five years.

(c). The charter was extended by another five years. A committee presided over by Dr.A.N.Saxena was formed to review the operating costs payable for the extended term. The committee tendered a report

dated 11.5.1996. The Government approved the report on 5.8.1993. There is no dispute between the parties in respect of the payments regarding the second five year period either.

5(a). This brings us to the period beyond ten years for which there is a dispute as to the basis for computing the rates for repairs and maintenance. By an order dated 29.4.1993 the charter was extended by a further six years. By an order dated 16.3.1995 and as modified by an order dated 14.9.1995 a committee also presided over by Dr.A.N.Saxena was formed to recommend a suitable formula for the charter rate for the further extended period.

(b). The committee submitted its report on 14.4.1997. This committee made recommendations inter-alia in respect of repair and maintenance expenses. The reference to arbitration was confined only to the payment of these repairs and maintenance expenses.

(c). The Government of India by a letter dated 15.6.1998 accepted the recommendations of the second Saxena Committee only partially. Representations were thereafter made by the Indian Shipping

Companies including the Respondents for reconsideration of the recommendations. Pursuant thereto, the Government of India appointed a high level working group presided over by one Naresh Narad for considering the outstanding pending issues. The following recommendations of the high power committee are relevant :

"Pending Issues.

1.	Determination of year from which R & M expenses are to be actualized	a) 1 to 5 years as per payments already made. Settled cases not to be reopened b) 6 to 10 years as per norms fixed by Dr.Saxena Committee of 1995-97. c) 11 and 12 years to be actualized on the basis of S.C.I's, OSVs as recommended by Dr. Saxena Committee of 1995-97."

6. Disputes and differences arose between the Appellant and inter-alia the Respondents regarding the method to be adopted for calculating rates payable with reference to the eleventh to the sixteenth years. The Respondent therefore filed Writ Petition No.2788 of 2001 for various reliefs.

7. By an order dated 7.12.2001 a Division Bench of this Court of which one of us (A.P.Shah, J.) was a party, recorded that the Writ Petition involved certain contractual disputes and that both the parties had agreed to refer the disputes raised in the Writ Petition to the sole arbitration of Mr.Justice M.L.Pendse (a former Judge of this Court and the former Chief Justice of the Karnataka High Court).

8. The learned arbitrator noted that the crux of the dispute between the parties pertains to the mode of calculating the rates payable with reference to the number of years. We have been through the Writ Petition, the statement of claim and the award The learned arbitrator, has, if we may say with great respect, considered the rival contentions in the correct perspective. Indeed, the issues noted by the learned arbitrator were precisely those which were raised in the statement of claim as well as in the Writ Petition.

The learned arbitrator noted the Respondent's submission that while calculating the payments due for the 11th to 16th years of the operation of the

OSVs of the Respondents, the Appellant had overlooked the important fact that the OSVs of the Respondents were taken on charter one year prior to the Appellant obtaining the OSVs of the Shipping Corporation of India. The Respondents therefore contended that it was not correct that the corresponding years of Shipping Corporation of India should be taken into account while determining amounts payable to the Respondents.

The Appellant on the other hand contended that the payments made by them were in conformity with the recommendation of the second Saxena Committee Report as approved by the high power committee and that it is immaterial when the OSVs were chartered.

9. The learned arbitrator rejected the Appellant's contention. While doing so, the learned arbitrator considered in detail the reports, including that of the second Saxena Committee and the high power committee. The learned arbitrator did not base his award by ignoring the said reports. Nor is the basis of the award contrary to the said reports. The learned arbitrator on a consideration of the reports, held that the committee nowhere recommended that irrespective of the period of induction, the

years should be calculated of that of the Shipping Corporation of India. It is pertinent to note that the arbitrator expressly recorded that the Respondents had not questioned the recommendations made by the high level working group report and the second Saxena Committee Report but merely contended that the mode of implementation thereof was incorrect. The arbitrator further observed and accepted that it was not open for him to go behind the report and the only area of enquiry is whether or not the report was correctly implemented. The learned arbitrator came to the conclusion that on a close scrutiny of the reports, it was clear that neither of the committees examined whether the entitlement of each OSV is to be determined with reference to the years of actual user or only with reference to the calender years. The learned arbitrator also came to the conclusion that for the computation of repairs and maintenance expenses it was necessary to take into consideration the years of operation and not the calender years. It was held that the 12th year of the operation of Shipping Corporation of India's OSVs should be equated with the 13th year of operation of the OSVs of the Respondents and so on. The learned arbitrator also held that the interpretation suggested by the

Respondents would lead to great injustice. For instance, the OSV of the Respondents would complete 11 years of operation while the OSVs of the Shipping Corporation of India would have operated only for 10 years.

10. The learned arbitrator has considered and construed the said reports while arriving at his conclusions. The entire dispute in the Writ Petition and before the learned arbitrator centered around this issue. The least that can be said in support of the award is that the view taken by the learned arbitrator is certainly a possible view if not the correct view. It can hardly be denied that the basis of the calculation adopted by the learned arbitrator was not only logical but just and fair. The provisions of the said reports are not such that they required no interpretation and were merely to be applied without anything more. They called for a proper interpretation and construction before being applied to the facts of the case. The learned arbitrator did so. Our attention was not invited to any part of either of the reports to contend that the arbitrator exceeded his jurisdiction or acted contrary to or ignored any of the provisions thereof.

11. In the circumstances, it would not be open for this Court in exercise of powers under section 34 of the said Act to set aside the award even if we were to come to the conclusion that provisions of the said reports were capable of another construction which commended itself to us in preference to the construction placed thereon by the arbitrator :

In *Sudarshan Trading co. versus Government of Kerala, (1989) 2 SCC 38*, it was held as under :

> "What is the interpretation of the contract is a matter for the arbitrator and on which the Court cannot substitute its own decision."

In *Hindustan Construction Company Ltd. versus State of J. & K., (1992) 4 SCC 217*, it was held as under :-

> "Even if in fact the arbitrators had interpreted the relevant clauses of the contract in making their award on the impugned items and even if the interpretation is erroneous, the court cannot touch the award as it is within the jurisdiction of the arbitrators to interpret the contract".

12. The challenge to the award on merits therefore fails.

13. Mr.Chagla's next submission was that the learned arbitrator has no jurisdiction to make the award in respect of the thirteenth to the sixteenth years. This submission is also not well founded.

It is necessary to set out the following reliefs in the Writ Petition verbatim :

> (a). that this Hon'ble Court be pleased to declare that the Petitioners are entitled to have the repair & maintenance expenses including corresponding OH expenses for their 11th and 12th years viz. 1994-95 and 1995-96 respectively to be determined on the basis of the corresponding figures for the 11th and 12th years of operation of the SCI's vessels i.e. for 1995-96 and 1996-97 and to read down the recommendations in the High Level Working Group (Exhibit 'C' hereto) to that effect;
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> (b). that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records of the Petitioners' case and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the action and/or inaction on the part of the Respondents in not

> paying to the Petitioners the repair and maintenance expenses including corresponding OH expenses for their 11th and 12th years viz. 1994-95 and 1995-96 on the basis of the corresponding figures for 11th and 12th years of the operation of the SCI's vessels i.e. 1995-96 and 1996-97 and in not paying to the Petitioners the arrears of the R&M expenses and the corresponding overhead expenses on the differential amount in the sum of approx. Rs. 6.73 crores as per 'Exhibit G' hereto.
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> (c). that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to forthwith pay to the Petitioners the 'repair and maintenance expenses including corresponding HO expenses for their 11th and 12th years i.e. 1994-95 and 1995-96 on the basis of the corresponding figures for the 11th and 12th years of the operation of the SCI's vessels i.e. for 1995-96 and 1996-97 and to forthwith pay to the Petitioners a sum of approx. Rs.6.73 crores the particulars of which are set out in Exhibit 'G' together with further interest @ 12% p.a. till date of payment."

14. It is clear that what the Respondent claimed was the repair and maintenance expenses in respect of said OSVs not merely for the 11th and 12th years but for the subsequent years as well. The prayers expressly seeks reliefs against the Appellants to

forthwith pay a sum of Rs.6,73,00,000/-, as per the particulars set out in Exhibit "G". Admittedly, the particulars in Exhibit "G" pertain to the 13th to 16th years. The prayers are therefore split into two categories the first of which pertains to the 11th and 12th years and the next pertains to the years subsequent thereto. Nothing could be clearer.

15. Mr.Chagla however submitted that the learned arbitrator held that he had jurisdiction for the reason that once the principle regarding the mode of calculation is accepted, it is not in the interest of the parties to litigate for each and every year and that it would not be appropriate to take any restricted view and drive a party to further litigation.

16. It is true that the learned arbitrator has made these observations. We do not however read these observations as having held that the reference in fact did not include the 13th to the 16th years but that despite the same the arbitrator thought it fit to adjudicate upon the same. That would be not merely far too technical a reading of the award but an unfair reading of the same. In fact, the disputes and differences in respect of the 13th to

the 16th years were referred to the learned arbitrator. We read these observations as only further fortifying the arbitrator’s conclusion that he had jurisdiction to decide the disputes even in respect of the 13th to the 16th years of the operation of the OSVs.

17. In the circumstances, the Appeal is dismissed. There shall however be no order as to costs.